

(c) He may fix the compensation of persons under Subsection (b), subject to the approval of the court.

46 (d) He may defray all reasonable expenses of taking possession of, conserving,
47 conducting, liquidating, disposing of, or otherwise dealing with the business and property
48 of the insurer. If the property of the insurer does not contain sufficient cash or liquid
49 assets to defray the reasonable costs incurred, the commissioner may advance the costs so
50 incurred out of the department's appropriation. Any amounts so paid are expenses of
51 administration and shall be repaid for the credit of the Insurance Department out of the
52 first available cash of the insurer.

53 (e) He may hold hearings, subpoena witnesses and compel their attendance, administer
54 oaths, examine any person under oath, compel any person to subscribe to his testimony
55 after it has been correctly reduced to writing, and in connection with these proceedings,
56 require the production of any books, papers, records, or other documents that the
57 liquidator considers relevant to the
58 inquiry.

59 (f) He may collect all debts and claims due and money belonging to the insurer,
60 wherever located, and for this purpose institute timely action in other jurisdictions to
61 forestall garnishment and attachment proceedings against those debts; perform any other
62 acts necessary or expedient to collect, conserve, or protect its assets or property,
63 including selling, compounding, compromising, or assigning for collection, upon the
64 terms and conditions as he considers best, any bad or doubtful debts; and pursue any
65 creditor's remedies available to enforce his claims.

66 (g) He may conduct public and private sales of the property of the insurer in a manner
67 prescribed by the court.

68 (h) He may cooperate with the associations created under Chapter 28 in using assets of
69 the estate to transfer policy obligations to a solid assuming insurer, if the transfer can be
70 arranged without prejudice to applicable priorities under Section 31A-27-335.

71 (i) He may acquire, hypothecate, encumber, lease, improve, sell, transfer, or otherwise
72 dispose of or deal with any property of the insurer at its market value or upon fair and
73 reasonable terms and conditions, except that no transaction involving property with a
74 market value exceeding [~~\$25,000~~] \$100,000 may be concluded without the express
75 permission of the court. The liquidator may also execute, acknowledge, and deliver any
76 deeds, assignments, releases, and other instruments necessary or proper to effectuate any
77 sale of property or other transaction in connection with the liquidation. In cases where
78 real property sold by the liquidator is located other than in the county where the
79 liquidation is pending, the liquidator shall cause a certified copy of the order of
80 appointment to be filed with the county recorder for the county in which the property is
81 located.

82 (j) He may borrow money on the security of the insurer's assets or without security,
83 and
84 execute and deliver all documents necessary to that transaction for the purpose of
85 facilitating the liquidation.

86 (k) He may enter into any contracts which are necessary to carry out the order to
87 liquidate, and assume or reject any contracts to which the insurer is a party. A contract is
88 considered rejected if it is not assumed within 60 days after the order of liquidation,
89 unless the time for action is extended by the court.

90 (l) He may continue to prosecute and institute in the name of the insurer or in his own
91 name, any suits and other legal proceedings, in this state or elsewhere. If the insurer is

dissolved under Section 31A-27-312, the liquidator may apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

(m) He may prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person.

(n) He may remove any records and property of the insurer to the offices of the commissioner or to any other place which is convenient for the efficient and orderly execution of the liquidation. Guaranty funds and associations shall be given reasonable access to the records to enable them to carry out their statutory obligations.

(o) He may deposit in one or more depository institutions in this state those sums which are required for meeting current administration expenses and dividend distributions.

(p) He may deposit with the state treasurer for investment under Title 51, Chapter 7, all sums not currently needed, unless the court orders otherwise.

(q) He may file any necessary documents for record in the office of any county recorder or record office in this state or elsewhere, where the property of the insurer is located.

(r) He may assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed does not bind the liquidator.

(s) He may exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member of the insurer, including any power given by law to avoid any transfer or lien that is not included among the powers given by Sections 31A-27-319 through 31A-27-322.

(t) He may intervene in any proceeding, wherever instituted, that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(u) He may abandon property or a claim he considers unprofitable or burdensome and obtain a court order declaring the abandonment of the property or claim.

(v) He may enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.

(w) He may exercise all the powers conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

(x) The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him, and does not exclude the right to do other acts not specifically mentioned or otherwise provided for, which acts are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

(2) A court order issued after a hearing and pursuant to Subsection (1)(g), (1)(i), (1)(t), or (1)(u) may be appealed as a final order for purposes of Rule 54 of the Utah Rules of Civil Procedure.

Section X. Section **31A-27-326** is amended to read:

31A-27-326. Reinsurer's liability.

(1) The amount recoverable by the liquidator from a reinsurer may not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate, except when the reinsurance contract provides for direct coverage of a named insured and the payment was made in discharge of that obligation.

(2) Upon recommendation of a claim to the court by the liquidator, and after approval of such claim by the court, the claim shall be deemed a paid claim. Reinsurers will be billed by the liquidator on such claims for amounts covered under the reinsurance contracts. If payment on the billed amounts is not paid by the reinsurer within sixty days after receipt of the billing, interest on the unpaid billed amount will accrue at the statutory legal rate.

Section X. Section **31A-27-330.6** is amended to read:

31A-27-330.6. Reinsurance commutations.

Notwithstanding Section 31A-27-330.5, when the insurer has been a party to a reinsurance agreement:

(1) The liquidator may negotiate a voluntary commutation and release of all obligations arising from the agreements. Commutation and release agreements voluntarily entered into by the parties and exceeding \$100,000 shall be reviewed by the court and shall be approved if the agreements are commercially reasonable, actuarially sound, and made in the best interests of the creditors of the insurer.

(2) At any time following a five-year period subsequent to the entry of the order of liquidation, the liquidator may apply to the court, with notice to the other party, for an order requiring that parties to the reinsurance agreement submit their commutation proposal to a panel of three arbitrators.

(3) Venue for the arbitration shall be within the district of the liquidation court's jurisdiction or such other location as may be agreed to by the parties.

(a) Upon the court's determination that commutation would be in the best interests of the creditors of the liquidation estate, the court shall require that the liquidator and the other party each appoint an arbitrator within 30 days. Within 30 days after appointment of the two arbitrators, the court shall appoint an independent, impartial, disinterested arbitrator qualified by actuarial training in the insurance and reinsurance industry.

(b) Within 60 days following the appointment of the third arbitrator, the parties shall submit to the arbitration panel their commutation proposals and other documents and information relevant to the determination of the parties' rights and obligations under the reinsurance agreement to be commuted, including a written review of open claim files and an actuarial estimate of incurred-but-not-reported losses.

(c) Within 60 days following the parties' submissions, the arbitration panel shall issue an award specifying the general terms of a commercially reasonable and actuarially

185 sound commutation and release agreement, and the liquidator shall promptly submit the
186 award to the court. The court shall confirm the panel's award absent proof of statutory
187 grounds for vacating or modifying the award.

188 (d) The time periods established in Subsection (4) may be extended upon the consent
189 of the parties or by order of the court, for good cause shown.

190 (e) If the arbitration panel finds, upon request of either party, that payment of or
191 enforcement of the panel's award would likely cause the insolvency of the affected
192 reinsurer, the portion of the award related to outstanding and incurred but not reported
193 losses may not be enforced and payment of the obligations may not be accelerated,
194 except:

195 (i) to the extent that the liquidator agrees to the payment, after consultation with the
196 reinsurer's domiciliary commissioner; and

197 (ii) on the liquidator's determination that enforcement of the award will not cause the
198 reinsurer's insolvency.

199 (f) Except as provided in Subsection (4), nothing in this section may be construed to
200 supersede or impair any provision in a reinsurance agreement that establishes a
201 commercially reasonable and actuarially sound method for valuing and commuting the
202 obligations of the parties to the reinsurance agreement by providing in the contract the
203 specific methodology to be used for valuing and commuting the obligations.

204 (4) (a) A commutation provision is not effective if it is demonstrated to the court that
205 the provision was entered into in contemplation of the insolvency of one or more of the
206 parties.

207 (b) A contractual commutation provision entered into within one year of the
208 liquidation order of the insurer shall be rebuttably presumed to have been entered into in
209 contemplation of insolvency.

210 (5) Sections 31A-27-330, 31A-27-330.5, and 31A-27-330.6 apply to liquidation
211 proceedings that are pending on April 29, 1996, and to all future liquidations.

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